

(Published in *The Wichita Eagle* on December 21, 2012)

ORDINANCE NO. 49-413

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS, TO ISSUE ITS HEALTH CARE FACILITIES REVENUE REFUNDING BONDS, SERIES IX, 2012 (AMERICAN BAPTIST ESTATES, INC.), IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$2,250,000 FOR THE PURPOSE OF PROVIDING FUNDS TO REFUND THE CITY'S OUTSTANDING HEALTH CARE FACILITIES REVENUE BONDS, SERIES I, 2008 (AMERICAN BAPTIST ESTATES, INC.), AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

WHEREAS, the City of Wichita, Kansas (the "Issuer") is authorized by K.S.A. 12-1740, *et seq.*, and K.S.A. 10-116a, all as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into lease and lease-purchase agreements with any person, firm or corporation for said facilities, to issue revenue bonds for the purpose of paying the cost of any such facilities and to issue revenue bonds to refund such bonds; and

WHEREAS, pursuant to the Act and Ordinance No. 47-738 of the Issuer, the Issuer has heretofore issued its Health Care Facilities Revenue Bonds, Series I, 2008 (American Baptist Estates, Inc.)" in the original aggregate principal amount of \$2,865,000 (the "2008 Bonds"), for the purpose of paying the costs of acquiring, constructing and equipping a health care facility and related improvements (the "Project") located in the City of Wichita, Kansas; and

WHEREAS, the Issuer has heretofore and does hereby find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Health Care Facilities Revenue Refunding Bonds designated "City of Wichita, Kansas, Health Care Facilities Revenue Refunding Bonds, Series IX, 2012 (American Baptist Estates, Inc.)" in the aggregate principal amount not to exceed \$2,250,000 (the "2012 Bonds") for the purpose of providing funds to refund the 2008 Bonds, including paying certain costs of issuance of such bonds and to lease the Project to American Baptist Estates, Inc., a Kansas not-for-profit corporation (the "Tenant"); and

WHEREAS, the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of the 2012 Bonds to execute and deliver (i) a Trust Indenture dated as of December 1, 2012 (the "Indenture"), with UMB Bank, N.A., Wichita, Kansas, as trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the 2012 Bonds; (ii) a Lease Agreement dated as of December 1, 2012 (the "Lease"), between the Tenant and the Issuer in consideration for payments of Basic Rent and Additional Rent provided for therein; (iii) Bond Purchase Agreement by and between the Issuer, the Tenant and Riedl First Securities Company of Kansas, Wichita, Kansas (the "Purchaser") providing for the sale of the 2012 Bonds by the Issuer to the Purchaser; and (iv) an Administrative Service Fee Agreement dated as of December 1, 2012, between the Issuer and the Tenant (collectively, the "Bond Documents"); and

WHEREAS, the 2012 Bonds and the interest thereon shall not constitute an indebtedness of the Issuer within the meaning of any constitutional provision or statutory limitation, shall not constitute nor give rise to a pecuniary liability of the Issuer, nor shall any 2012 Bond or the interest thereon be a charge against the general credit or taxing powers of the Issuer, but shall be payable solely to the extent possible from certain fees, rentals, revenues and other amounts derived by the Issuer pursuant to the Lease, from payments made pursuant to a certain Guaranty Agreement dated as of December 1, 2012 (the “Guaranty”) by and between American Baptist Estates, Inc., as Guarantor, and the Trustee, and, under certain circumstances, from the proceeds of the 2012 Bonds and insurance and condemnation awards; and

WHEREAS, pursuant to the Indenture, the 2012 Bonds shall be equally and ratably secured and on a parity with any Additional Bonds (as defined therein);

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Authority to Refund the 2008 Bonds. The Governing Body of the Issuer hereby authorizes the current refunding of the 2008 Bonds in accordance with the provisions of the Indenture, all as provided herein and in the Indenture and the Lease.

Section 2. Authorization and Security for the 2012 Bonds. There are hereby authorized and directed to be issued revenue refunding bonds of the Issuer, to be designated “City of Wichita, Kansas, Health Care Facilities Revenue Refunding Bonds, Series IX, 2012 (American Baptist Estates, Inc.)” (the “2012 Bonds”) for the purpose of providing funds to pay certain costs of issuance of the 2012 Bonds and to refund the 2008 bonds. The 2012 Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Indenture. The 2012 Bonds shall be special limited obligations of the Issuer payable solely to the extent possible from certain of the revenues derived by the Issuer pursuant to the Lease, or otherwise in connection with the Project. The 2012 Bonds shall not be general obligations of or constitute a pledge of the full faith and credit of the Issuer within the meaning of any constitutional or statutory provision and shall not be payable in any manner from tax revenues. The 2012 Bonds shall be secured under the provisions of the Indenture and are authorized hereby.

Section 3. Execution of 2012 Bonds and Bond Documents. The Mayor of the Issuer is hereby authorized and directed to execute the 2012 Bonds and deliver them to the Trustee for authentication on behalf of, and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor is further authorized and directed to execute and deliver the Bond Documents on behalf of, and as the act and deed of the Issuer in substantially the forms presented for review prior to final passage of this Ordinance, with such minor corrections or amendments thereto as the Mayor may approve, which approval shall be evidenced by his execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or any Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the 2012 Bonds, the Bond Documents and such other

documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's official seal.

Section 4. Lease of the Project. The Issuer shall cause the Project to be leased to the Tenant pursuant to and in accordance with the provisions of the Lease in the form approved herein.

Section 5. Approval of the Guaranty Agreement. The form of Guaranty Agreement dated as of December 1, 2012, pursuant to which the Tenant, as Guarantor, guarantees to the Trustee, for the benefit of the owners of the 2012 Bonds, the full and prompt payment of the principal of, redemption premium, if any, and interest on the 2012 Bonds, is hereby approved.

Section 6. Pledge of the Project. The Issuer hereby pledges the Project, and the net revenues therefrom, to the payment of the 2012 Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the 2012 Bonds and any Additional Bonds shall be deemed to have been paid within the meaning of the Indenture.

Section 7. Further Authority. The Issuer shall, and the officers, agents and employees of the Issuer are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the 2012 Bonds and the Bond Documents all as necessary to carry out and give effect to the transactions contemplated hereby and thereby.

Section 8. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the Governing Body of the Issuer and publication once in the official newspaper of the Issuer.

[Remainder of this page intentionally left blank]

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas, this December 18, 2012.

CITY OF WICHITA, KANSAS

(Seal)

By: _____
Carl Brewer, Mayor

Attest:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf
City Attorney